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09/139,298	08/25/1998	RICHARD M. ANDERSON	ARM-11206/06	5160

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT PAPER NUMBER

1761

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 28

Application Number: 09/139,298  
Filing Date: August 25, 1998  
Appellant(s): ANDERSON, RICHARD M.

Thomas E. Anderson  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**

**OCT 20 2003**

**GROUP 1700**

This is in response to the appeal brief filed 05/01/03.

**(1) Real Party in Interest**

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A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is deficient because there is no mention of a "consumer" in the original specification.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1, 4-8, 16 and 18 do not stand or fall together with claim 19 and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

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Stear, C. A. Handbook of Breadmaking Technology, 1990, pp. 210-213, 400-406, 523-524 and 606.

Litwak, D. "New Software Gives Operators More Dough" Supermarket Business, vol45, no. 6, (June 1990), p. 1A(3)

Muskal, M. Making Dough with the PC, PC Magazine, Feb. 7<sup>th</sup> 1984, v3, p228(5)

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-8, 16, and 18-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant amended the claims with the phrase "customer delivery device" and "consumer" (rather than customer) and original specification basis for this phrase was not found.

While not a rejection, it is noted that the specification was objected to under 35 U.S.C. 132 due to the inclusion of the above phrases. Because the phrases have been incorporated into the claims, this issue is appealable and therefore before the Board. See MPEP 608.04( c).

Claims 1, 4-8, 16, 18 and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Litwak (Supermarket Business) or Muskal (PC Magazine) in view Stear (Handbook of Breadmaking Technology).

For the purposes of this rejection, the term "consumer" (which replaced the term customer) has been interpreted broadly, i.e., as a consumer of goods and services, rather than as

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it might narrowly be construed, e.g., someone who actually eats the product of the claimed process.

Litwak teaches that which is known concerning software program applications for bakeries. The software is aimed at "the independent baker, and the medium or even the larger-scale wholesale bakery." (§ 6) One company, Castle Computer Group, produces software that keeps "a running inventory of all ingredients that are in storage," has "production guides built in that manipulate the recipes," and "historic sales files." The software is modular and "is tailored for their business." Their software does "order entry, production reports, ingredients, scheduling, and labor costs." Another company, Datapax, Inc., has a modular system "can handle anything from costing and analysis to ingredients formulations, gross profit and labor analysis, custom cakes, point-of-sale interfaces, and a forward-order system that gives a projection of sales."

Muskal teaches that Deerfield Bakery runs its operations using an IBM PC. Specifically, he quotes "[i]t's natural for commercial programmers to take the applications from large businesses -- that's what they've done" and further the bakery owner had written his own programs. These programs "include those for accounts receivable, bread recipes, cake recipes, and billing for wholesale accounts. "When a customer calls in an order, the information is jotted down and later entered on the computer, where it is sorted by field (name, address, telephone number, type of order, price, and so forth). It is considered that the answering of the phone reads on "an automated phone answering device". The bakery then determines the actual recipe and gives directions on how the machinery is to be operated.

These two articles provide the teaching that bakery orders from retail customers can be taken and tracked by computer. They do not teach that these same computers are linked to the machinery for manufacturing the baked items.

Stear teaches that Reimelt and Atlas Equipment Co. have worked together to provide custom baking systems "some of which not only control batching of ingredients but also the production line". Further, these systems "are tailor-made, and no two systems are identical although certain core-elements of software and hardware are the same, e.g., batching control, accuracy checking and optimization." The system can "interpret from an input of the number of finished products required, the appropriate number of ingredient batches." "The complete program of various flours, ingredients and liquids are pre-programmed, automatically weighted and recorded, and the silo contents determined." Figures 46(a)-(g) present several views of the system. (See page 400).

On page 402, there is stated "[w]ith production lines getting larger and more specialized in most bakeries, the trend is towards a 'one-stop' collection of raw material, whereby they are weighed together and moved as a batch (Fig. 47(a)-(f)). This system requires a mainframe computer to handle the raw material batching, checking and sequencing operation."

Stear, on pages 210 and 211, also teaches the use of automatic traveling proofers and ovens. It is considered that it would have been obvious to one of ordinary skill in the art to use the computer controls as recited above in connection with the automatic traveling proofers and ovens since they are well known to the baking industry and their use inherently reduces the need for manpower, which is the common impetus for computerizing a process line.

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On page 523 and 524, Stear teaches the production of multi-grain breads where several ground grains are added as part of the recipe. While Stear does not teach the grinding of the grain after the grain has been selected from a storage bin but rather teaches that the grain has already been ground is not considered to be a patentable distinction between the teachings of the reference and the instant invention. It would have been obvious to one of ordinary skill in the art to grind the grain after it has reached the bakery rather than before as taught by Stear because this is a choice that those in the art make based on the expense of the equipment, the amount of multi-grain bread produced, etc.

On page 606, Stear teaches the well known use of "electric multi-deck ovens" that are popular with "the craft-baker, the in store bakery, and the hot-bread shop, owing to its flexibility and ease in operation." "The standard electric multi-deck unit is designed for one-tray oven depth, accommodating 2-3 trays across its width; the number of decks can be varied from 1 up to 6. Electronic temperature control is accurate, with a digital read-out, and top and bottom heat are controlled independently."

On page 399, there is disclosed an introduction to the previously disclosed methods of weighing ingredients. Specifically, it states that

The advantages of electronics for weighing functions can offer a host of applications. In using multi-component weighers, recipes for various types of products can be stored, The dosing of ingredients, and the tempering of dough liquids beforehand, based on any batch size, is no problem for electronics. Errors in calculation, and memory are impossible with a correctly programmed computer. The storage capacity for information means that the computer can be used for the silo, mixing and baking.

It would have been obvious to one of ordinary skill in the art to use the computer means of Stear in connection with the computer means of Muskal or Litwak because the prior art as a

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whole teaches the automation of all bakery functions and therefore those in the art have ample motivation to combine an automated process of receiving and tracking retail bread orders with the actual baking of the bread to decrease the number of employees, increase product consistency, etc.

Further, it is noted that it is well established that automating a manual activity is *prima facie* obvious. *In re Venner*, 262 F.2d 91, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined “old permanent - mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed.” The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.).

It is also considered *prima facie* obvious to scale-up or scale-down well known processes. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955)(Claims directed to a lumber package “of appreciable size and weight requiring handling by a lift truck” where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) (“mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled.” 189 USPQ at 148.).

**(11) Response to Argument**



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Appellant argues that none of the references in combination, “teach permitting the end user to directly enter an order into which produces a baked product from raw material.” (Brief, page 4, bottom). To be precise, none of the claims specifically recite a limitation of an “end user” to “directly enter” an order. The claims are directed to a “consumer” utilizing an “electronic interface.”

Appellant also argues that none of the references teach “an automated system which produces custom on demand delivery of baked goods from raw material at the point of delivery.” (Brief, page 5, top). Again, to be precise, the claims do not specifically mention, “custom on demand delivery.” Appellant also argues that the prior art “do not suggest a method which the end user can select and obtain fresh baked goods on demand from a single machine which produces the baked food from raw materials.” *Id.* The claims do not mention “fresh baked goods” or “a single machine.”

The prior art teaches all the limitations that are found in the rejected claims. The *prima facie* case of obviousness is based on that set forth in the rejection above. Appellant asserts that claim 19 is not made obvious by the prior art. Claim 19 limits the invention by including the directing step of claim 1, to include “determining a start time for initiating the dough making apparatus which is a predetermined period of time before the time for delivery such that the food products are produced for delivery at the time for delivery.” This limitation is anticipated as those in the art always select a start time for starting the making of bread.

With regard to the rejection of the claims and the objection of the specification based on new matter, i.e., the use of the term “consumer” (rather than customer) and “consumer delivery station,” appellant states that while the original specification does not contain the term

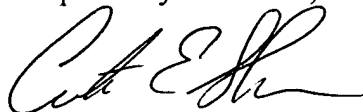
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"consumer," said term was introduced in order to distinguish the prior art. Appellant then argues that the rejection is improper, because the definitions of "consumer" and "customer" are "nearly identical."

While it appears that said terms could read on each other, they can also be of different scope. While the specification clearly provides basis for the customer being the one who purchases the final baked product, it does not clearly imply that this is the same person who will consume, i.e., eat, said product.

For the above reasons, it is believed that the rejections should be sustained.

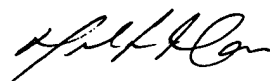
Respectfully submitted,



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October 17, 2003

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